

Now that is my opinion. I may be right or I may be wrong. I certainly have the misfortune to differ from one or two of the no doubt very eminent officials who have given evidence in this prosecution. But whether I am right or whether I am wrong, I am not prepared to admit for one moment that it is an unreasonable construction that I have put upon the Order in question. And that being so it follows that there was nothing unreasonable, still less was there anything wrongful so as to bring the matter within the scope of the criminal law for the appellant or anybody else adopting the same construction.

That being so, and if the learned President had realised that it was so, then if the journeys were in fact performed in the M.G. car the appellant was perfectly entitled to mileage in respect of them or at the very lowest to be regarded as quite honest in believing that he was so entitled. And it seems to me that had the learned President taken that view he would then have realised that the first charge was very much on all fours with the second and third charges which he had already disposed of and the questions involved were the same. If he had realised that then clearly he would have applied the same principles to decide the first charge as he did in deciding the second and third charges and this would have led him to the same conclusions.

Reading the Grounds of Judgment it is clear that in the learned President's mind the whole sting in the case against the appellant on the first charge lay in his presumed familiarity with the Financial General Orders. But that sting was drawn when it is realised that the learned President himself was interpreting these Orders in a way that was probably wrong and which certainly was not the more reasonable way of interpreting them. Had he done as he did in connection with the second and third charges and had he applied his mind to the true questions of whether the journeys were or were not performed and whether it was reasonably possible that the appellant might have claimed in respect of some journeys he did not in fact perform by reason of forgetfulness then it is abundantly clear that he would have treated the first charge as he did the second and third charges and dismissed it.

In all the circumstances of the case and for these reasons I am compelled to set aside the conviction and make an order of acquittal and discharge.

Appeal allowed.

Solicitors: *Das & Co.*

***In re H. W. SHAWCROSS &
In re A. G. NEALE CROSS***

[O.C.J. (Whyatt C.J.) February 16, 1956]

[Singapore — Admission of Advocates & Solicitors No. 28 of 1955 and No. 2 of 1956]

Advocates & Solicitors Ordinance (Cap. 62), ss. 5, 34 and 36 — Special grounds for dispensing with the requirement of six months instruction in law in the office in the Colony of a practising advocate and solicitor and shortening the period during which notice of the petition is required to be posted — What constitutes special grounds.

In these cases, the petitioners presented petitions to be enrolled as advocates and solicitors of the Colony. They subsequently applied to the Court pursuant to the provisions of s.5(5) of the Advocates & Solicitors Ordinance for an order to be made on special grounds dispensing with the requirement of six months instruction in law in the office in the Colony of a practising advocate and solicitor and shortening the period during which notice of their petitions is required to be posted. In his affidavit Sir Hartley Shawcross, one of the petitioners, stated that he had been in continuous and active practice at the Bar in England and elsewhere in Her Majesty's Dominions for the past 30 years and during five of these years he held the office of Attorney-General for England. He also stated that he has considerable experience and special knowledge of public and private international law. He further stated that he had been retained by three Dutch oil companies to appear for them in an appeal from the decision of the Compensation Board and that the issues arising in the appeal are of great complexity and importance involving difficult questions of public and private international law. The other petitioner, Mr. Geoffrey Cross, stated that he had been in active practice in England and that he was a member of the Lord Chancellor's Committee on Private International Law. The Singapore Bar Committee opposed the applications on the following grounds: (i) no counsel should be granted exemption from the requirement of receiving instruction in law for six months, unless he establishes as one of his special grounds that he has acquired an adequate knowledge of local law and local conditions and of all the branches of the advocates and solicitors profession; (ii) that s.5(5) of the Advocates and Solicitors Ordinance cannot apply to an ad hoc admission, that is an admission to appear in one particular case because (a) as air travel was comparatively undeveloped in 1935 when the Ordinance was passed, the Legislature could not have contemplated then the possibility of counsel visiting the Colony for one particular case only (b) the special grounds relied upon by a petitioner must apply to the whole field of professional work which an advocate and solicitor might carry out once he has been admitted and that any ground which is relevant only to an ad hoc admission falls outside the ambit of the section.

Held: (1) the words "special grounds" are wide and flexible words and no Court can or should attempt to lay down an exhaustive definition of these words. Each case must depend on its own particular facts and it is for the Court to say whether the facts are so special and exceptional as to justify dispensing with the usual procedure of six months notice and six months instruction.

in law as prescribed by s.5(2) and (3) of the Advocates & Solicitors Ordinance. In arriving at its decision, the Court will bear in mind that the object of these provisions is to protect the public and will not sanction any departure from the procedure if it considers that course might involve risk to members of the public; (2) the facts disclosed in the affidavits of the petitioners in these petitions were special and exceptional and therefore the applications should be allowed.

Case referred to:—

(1) *In re Atkinson* (1947) M.L.J. 160.

ADMISSION OF ADVOCATES & SOLICITORS.

Dr. C. H. Withers-Payne for the 1st petitioner.
K. Gould for the 2nd petitioner.

T. E. Atkinson for the Bar Committee.

G. S. Hill (Crown Counsel) for the Attorney-General.

Whyatt C.J. :—On the 19th December 1955, Sir Hartley Shawcross Q.C. presented a petition to this Court requesting that he be enrolled as an advocate and solicitor of this Colony. In accordance with sub-section (1) of section 5 of the Advocates and Solicitors Ordinance the petition was accompanied by two testimonials; one was a testimonial from the Lord High Chancellor of England, Lord Kilmuir, and the other was from the Lord Chief Justice of England, Lord Goddard. Both testimonials were in similar terms and stated that the writers had long known Sir Hartley Shawcross and considered him in every way suitable for admission to the Singapore Bar. On the 18th January 1956 Mr. Geoffrey Cross Q.C. also presented a petition to be enrolled as an advocate and solicitor of the Colony. The testimonials accompanying his petition were provided by the Master of the Rolls, Lord Evershed, and a former Lord Chancellor, Lord Simonds, and were similar in their terms to those accompanying Sir Hartley Shawcross's petition.

Subsequently the petitioners applied to the Court, pursuant to the provisions of sub-section (5) of section 5, for an order to be made on special grounds, dispensing with the requirement of six months instruction in law in the office in the Colony of a practising advocate and solicitor and shortening the period during which notice of their petitions is required to be posted. The applications were heard together at the request of the Bar Committee and came before me on the 30th January 1956. After hearing evidence and arguments in support of the applications and the arguments in opposition thereto advanced by the Bar Committee, I granted the applications and stated I would give my reasons later, which I now proceed to do.

The special grounds upon which the petitioners relied for exemption from the ordinary procedure applicable to a person seeking admission to the Singapore Bar were set out, as required by sub-section

(5) of section 5 of the Ordinance, in affidavits. Sir Hartley Shawcross in his affidavit stated that he had been in continuous and active practice at the Bar in England and elsewhere in Her Majesty's Dominions for the past thirty years, and during five of those years he had held the office of Attorney-General for England. He further stated that he had been retained by three Dutch oil companies to appear for them in an appeal from a decision of the Compensation Board to the Court of Appeal in Singapore, and that the issues arising in the appeal were of great complexity and importance, involving difficult questions of public and private international law. Sir Hartley Shawcross added that the Dutch oil companies had suggested that he had some special knowledge of international law and he attached to his affidavit an appendix summarising his experience in this branch of the law. It would overburden this judgment to catalogue all Sir Hartley Shawcross's experience and achievements in the field of international law; it will suffice to mention that he is a Judge of the Court of Arbitration at the Hague, that he has practised before the International Court of Justice and in fact, delivered the inaugural address to that Court, that he is a member of the Executive Committee of the International Commission of Jurists and was awarded an honorary degree of Doctor of Law by Columbia University, *inter alia*, in recognition of his contributions to international law. The affidavit referred also to the fact that the respondents to the appeal had been represented by an English Queen's Counsel, Mr. Diplock, in the earlier proceedings before the Compensation Board and intended that he should again represent them on the appeal. It was explained, however, in Mr. Cross's affidavit that Mr. Diplock had recently been appointed a Judge of the Queen's Bench Division and that the respondents wished Mr. Cross to represent them in his place. Mr. Cross's affidavit, like that of Sir Hartley Shawcross, referred to his active practice in England and stated also that he was a member of the Lord Chancellor's Committee on Private International law.

One further matter in connection with the affidavit evidence requires to be mentioned. In paragraph 9 of his affidavit, Sir Hartley Shawcross referred to a letter dated 25th November 1955, written by the Singapore Bar Committee to the Attorney-General. The last paragraph of this letter reads as follows:—

"Finally, the Committee considers the situation which has arisen is most embarrassing. There is no desire to prevent these gentlemen from appearing in Court in very special circumstances such as these but it is considered that in the absence of any legislation covering the matter the Committee has no option to act otherwise than as indicated."

The proposal to proceed in the manner indicated refers to the earlier part of the letter where it is stated :—

"That if both Mr. Diplock, Q.C. and Mr. Shawcross, Q.C. are to apply to be admitted as Advocates and Solicitors, the Committee would be failing in their duty to the profession if the applications are not opposed. Therefore notwithstanding the unfortunate precedent created by the admission of Mr. Pritt, Q.C. the Bar Committee will brief Counsel to oppose both applications. If Mr. Diplock, Q.C. does not apply for admission but appears in Court under the provisions of section 34, the Committee reserves its right to take proceedings against him under section 36 of the Advocates and Solicitors Ordinance on the footing that he is not qualified to appear under section 34 and will at the same time oppose the admission of Mr. Shawcross."

At the commencement of the present proceedings, counsel for the Attorney-General stated that if Mr. Cross (who is Mr. Diplock's successor) was not successful in his application, the Attorney-General intended to authorise him to appear for the respondents under section 34. Counsel for the Bar Committee stated that the Bar Committee considered it deplorable that the Attorney-General should use section 34, in the present circumstances, but agreed that their earlier view that the Attorney-General was not entitled in law to use that section was incorrect.

It will be observed that the Bar Committee in their letter of the 25th November 1955, stated that they would be failing in their duty to the profession if they did not oppose the applications. At the hearing before me, this theme was strongly emphasised by counsel for the Bar Committee who stated that this case was of the greatest possible importance not only to the Bar but to the public at large. He contended that if the Court approved the present applications, the door would be wide open for similar applications in future, and that there would be no point of principle upon which future applications by experienced London counsel could be opposed; he further contended that to allow counsel from outside the Colony to come here and appear in *causes celebres* would have a bad effect on the local Bar and would lessen the confidence of the public in the ability of the local Bar, the outside counsel would only be available to rich clients and this would create a sense of grievance harmful to the administration of justice, and that the local Bar would come to be regarded as second-raters. Counsel for the Bar Committee further stated that the local Bar were not being selfish in this matter but they felt it would not be possible to work as a self-respecting Bar if outside practitioners could, as he put it, swoop down on the Colony.

These arguments raise, by implication if not in express terms, a question of policy, namely whether, and if so in what circumstances, the local Bar should be

protected from outside competition, and it appears to me that they are more suitable for consideration by a legislative body than by a Court of law charged with the duty of construing the words of certain sections of this Ordinance. No one doubts that the legislature could pass legislation protecting the legal profession, if it considered it expedient to do so, but before an Ordinance could be construed as giving protection to one particular section or group in the community, it would be necessary in my opinion, for the legislature to express its intention in words of irresistible clearness. There are no such words in the Advocates and Solicitors Ordinance. In my view the object of the restrictive provisions of this Ordinance is not to protect the legal profession but to protect the public from legal practitioners who might otherwise undertake work which through lack of knowledge or experience they were not adequately qualified to perform. At the same time while laying down certain general rules for the protection of the public, the legislature has recognised that there may be exceptional cases where the usual safeguards may be relaxed without detriment to the public and accordingly has provided in sub-section (5) of section 5 that the Court may modify or dispense with them on "special grounds." The point I have to decide, therefore, in this case is the dry legal question whether the petitioners have established "special grounds" within the meaning of those words as used in sub-section (5) of section 5.

It was contended by the Bar Committee that the expression "special grounds" should be given a restricted meaning and the arguments in support of this view fell under two heads. The first was that no counsel should be granted exemption from the requirement of receiving instruction in law for six months in a local law office as laid down in sub-section (3) of section 5 unless he establishes, as one of his special grounds, that he has acquired an adequate knowledge of local law and local conditions and of all the branches of the advocates and solicitors profession. The short answer to this contention is that it is contrary to the decision in *In re Atkinson*⁽²⁾, which was not questioned by the Bar Committee, where Mr. Justice Jobling expressed himself thus :—

"The policy of section 5(3) is clearly that practitioners shall, before admission, acquire such knowledge and experience of local laws and practice as will ordinarily be obtained by attending at the office of a local practising advocate and solicitor of not less than 7 years standing for the prescribed period which in the case of this petitioner is 6 months. It follows that any special grounds advanced in support of an application under section 5(5) to shorten the prescribed period must satisfy the Court either, that it is in the public interest or otherwise desirable that this policy should not be strictly adhered to in a particular case, or, that the petitioner has acquired the requisite knowledge and experience in a manner or period other than that provided."

It is clear, therefore, that special grounds are not limited to those cases where the petitioner shows that he has acquired an adequate knowledge and experience of local laws and practice by means other than those laid down in sub-section (3) of section 5; the petitioner may show, in the alternative, that it is in the public interest or otherwise desirable that the normal procedure prescribed by sub-section (3) of section 5 should not be followed. Furthermore it is to be observed that sub-section (1) of section 7 of the Ordinance provides in terms that in certain circumstances certain advocates and solicitors shall have an adequate knowledge of local laws but no similar words are to be found in sub-section (5) of section 5 which is the sub-section with which the Court is concerned in the present case. It is clear that where the legislature wishes to provide in this Ordinance for a knowledge of local laws, it conveys its intention in express terms, and therefore, in accordance with ordinary rules of construction, there is a presumption that where it does not so provide, there is no such intention, and consequently the meaning contended for cannot be implied in this sub-section.

The second head relied upon by the Bar Committee was that sub-section (5) of section 5 cannot apply to an *ad hoc* admission, that is to say, to an admission to appear in one particular case. I may say at once that I think the provisions of this sub-section are somewhat inapt to provide for *ad hoc* admissions and I appreciate the force of certain of the arguments of the Bar Committee on this aspect of the case, but at the same time, I cannot accept the view that the words of the sub-section cannot, as a matter of law, apply, on a proper construction, to an *ad hoc* admission. The first argument under this head was, in my opinion, unsound. It was contended that when this Ordinance was passed in 1935, air-travel was comparatively undeveloped and therefore the legislature could not have contemplated the possibility of counsel visiting the Colony for one particular case. This argument assumes, I think too readily, that communications in 1935 were such that it was not practicable for an outside counsel to visit the Colony for a single case, but even assuming, for the purpose of argument, this view to be correct, it does not follow that the words "special grounds" have to be given a restricted meaning because air-travel was not in the contemplation of the legislature at the time the Ordinance was enacted. The principle of construction applicable to new situations arising after the passing of a statute is conveniently stated in *Maxwell's Interpretation of Statutes*, 10th Edition at page 79 in the following terms :—

"Except in some cases where the principle of excessively strict construction has been applied, the language of a statute is generally extended to new things which were not known and could not have been contemplated by the legislature when it was passed. This occurs when the Act deals with a genus and the thing which afterwards comes into existence is a species of it."

If it were necessary when construing this sub-section to have regard to the various kinds of communication in existence in 1935, which I very much doubt, then the development of air-travel since that date would, in my view, be covered by this principle.

The second argument advanced by the Bar Committee under this head was on somewhat different lines. It was submitted that the special grounds relied upon by a petitioner must apply to the whole field of professional work which an advocate and solicitor might carry out once he has been admitted and that any ground which is relevant only to an *ad hoc* admission falls outside the ambit of the sub-section. Counsel for the Bar Committee argued that if this were not so, a petitioner who had been admitted *ad hoc* on special grounds applicable to one particular case could return subsequently to undertake other cases to which the special grounds did not apply, because once admitted he is admitted for all time and for all purposes. On first impression, this appears to be a cogent argument, but when it is examined, it appears to me to be the first argument that a petitioner must have an adequate knowledge and experience of local laws re-stated in a different form. The matter may be tested by taking a case where the special grounds advanced by an outside counsel for *ad hoc* admission, include, *inter alia*, a ground showing that the petitioner has acquired an adequate knowledge and experience of local laws by means other than those laid down in sub-section (3) of section 5. In such a case, no objection could be raised to the petitioner returning to the Colony to undertake other cases except on the basis that, in addition to his legal qualifications, the petitioner should also possess a residential qualification. There could, however, be no foundation for such an objection since the Ordinance nowhere makes any mention of a residential qualification although the legislation dealing with this subject which existed prior to 1935 did so, and it would be wrong to introduce a residential qualification into this Ordinance by a side-wind, as it were, when construing the words of this sub-section. Thus the only objection which could be urged, as a matter of law, against outside counsel returning to undertake further cases after being admitted *ad hoc* would be that the special grounds upon which he relied for his admission did not show that he had an adequate knowledge and experience of local laws. This, as I

have said, is the first head of argument repeated in another setting and I have already pointed out that this restricted interpretation of special grounds is, *inter alia*, contrary to the decision in *In re Atkinson*⁽²⁾ I should perhaps add that during the course of the argument under the second head, counsel for the Bar Committee conceded that if a case arose which required a highly specialised knowledge of the law for which no suitable advocate was available in the Colony and in consequence, there might be a failure of justice if an outside counsel were not admitted *ad hoc*, such a combination of circumstances would constitute special grounds within the meaning of sub-section (5) of section 5. I agree with this view, and indeed any other view would mean that the legislature intended that a restrictive meaning should be given to these words even though that might in certain circumstances result in a failure of justice, which would be contrary to the accepted canon of construction that the legislature is presumed not to intend an injustice. I would point out, however, that once it is conceded that the language of sub-section (5) of section 5 is wide enough to cover this particular type of case, the argument that it cannot, as a matter of law, apply, to *ad hoc* admissions becomes logically untenable.

It follows that the argument of the Bar Committee fails under both heads. In my opinion, the words "special grounds" are wide and flexible words and to limit their meaning in the manner suggested by the Bar Committee would be to impose upon the Courts greater fetters than the legislature has imposed on them. No Court can or should attempt to lay down an exhaustive definition of these words. Each case must depend upon its own particular facts and it is for the Court to say whether the facts are so special and exceptional as to justify dispensing with the normal procedure of six months notice and six months instruction in law prescribed by sub-sections (2) and

(3) of section 5. In arriving at its decision, the Court will bear in mind that the object of these provisions is to protect the public and will not sanction any departure from the normal procedure if it considers that course might involve risk to members of the public.

That being the construction I place on the expression, "special grounds", the only remaining question is whether the grounds advanced by Sir Hartley Shawcross and Mr. Cross bring them within its terms. I have already dealt with their affidavits in some detail and it is unnecessary to refer to them again. It is sufficient to say that the facts disclosed in the affidavits are special and exceptional; the Bar Committee in their letter of the 25th November to the Attorney-General refer to the circumstances as "very special". In fact the difficulty is rather to find any thing in this case which is not special and exceptional, and I have no doubt that the combination of facts set out in the affidavits is such as to justify dispensing with the normal procedure and constitutes special grounds within the meaning of sub-section (5) of section 5. I should perhaps add, though it is probably superfluous to do so, that no one has suggested in these proceedings that there will be any risk to the public, either now or in the future, if these applications are granted and Sir Hartley Shawcross and Mr. Cross are admitted to the Singapore Bar; as Counsel who appeared on their behalf pointed out, they would as Queen's Counsel, always be briefed by a local advocate and solicitor who would, if the point should arise, provide such knowledge and experience of local laws as might be required to safeguard the public.

For these reasons, I am satisfied that this is a case in which the Court should shorten the period of notice and dispense with the requirement of six months instruction in law and I have made orders accordingly.

Orders accordingly.

Solicitors : *Drew & Napier; Rodyk & Davidson;*
Allen & Gledhill.

ARUNASALAM THEVAR v.
PUBLIC PROSECUTOR

[A.Cr.J. (Thomson J.) February 17, 1956]

[Ipoh — Criminal Appeal No. 5 of 1956]

Minor Offences Ordinance, 1955, s. 29(1) — Fraudulent possession of property — Question to be asked by the Magistrate in coming to a decision

This was an appeal from the decision of the learned Magistrate who convicted the appellant for an offence under s.29(1) of the Minor Offences Ordinance.

In such cases, there are two questions which have to be decided one way or the other before there could be any decision as to whether the appellant was to be convicted: (1) Was the accused carrying something that might be reasonably suspected of being stolen?; (2) If it were something reasonably suspected of being stolen, did he give a satisfactory account of how he came by it?

The first question must be answered by the Magistrate on a consideration of all the surrounding circumstances. The second question again was for the Magistrate to decide in the light of the circumstances as a whole. It was a question for the Magistrate as a reasonable prudent man as to whether or not the explanation given to the police or in Court to the Magistrate himself was a satisfactory explanation.

In this case the learned Magistrate had not made it clear in his grounds of judgment that he did put these questions to himself and therefore an order for retrial was made.

MAGISTRATE'S CRIMINAL APPEAL.

N. Sharma for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. (delivering oral judgment): — In this case I have decided to order a re-trial because on consideration I am unable to satisfy myself as to whether or not the Magistrate correctly applied the law to the evidence before him.

The appellant was charged with an offence in contravention of section 29(1) of the Minor Offences Ordinance, 1955, which is to the effect that any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine, and so forth.

The facts are that the appellant was stopped in one of the streets in Kampar where he was carrying a very large quantity of copper wire on the back of his bicycle. He was stopped by a detective and there was some sort of conversation between him and the detective.

In view of the course I am taking I do not propose to discuss the nature of that conversation which is in controversy. At that time the appellant may or may not have offered some explanation as to how he came to be in possession of the wire. In any event, at his

subsequent trial he gave an explanation to the Magistrate.

Now on that there were two questions to be decided one way or the other before there could be any decision as to whether the appellant was to be convicted.

The first of these questions was:—

Was he carrying something that might be reasonably suspected of being stolen?

That was a question to be answered by the Magistrate on a consideration of all the surrounding circumstances

The second question was:—

If it were something reasonably suspected of being stolen, did he give a satisfactory account of how he came by it?

That, again, was for the Magistrate to decide in the light of the circumstances as a whole. And I hope it is unnecessary for me to observe that it was a question for the Magistrate as a reasonable prudent man as to whether or not the explanation given by the appellant, whether it was given to the Police or whether it was given in Court to the Magistrate himself, was a satisfactory explanation.

Now, I am not at all clear from the Magistrate's Grounds of Judgment that he did put these questions to himself. It is possible to say that he put the second question to himself. If that were all there were to it I should not be disposed to allow the appeal. But I am not satisfied that he put the first question to himself.

In the circumstances, I feel in the interests of justice that the conviction should be set aside and that the case should be tried anew.

Re-trial ordered.

COMPTROLLER OF INCOME TAX v.
HARRISON & CROSFIELD (MALAYA)
LTD.

[P.C. (Lord Oaksey, Lord Mortorn of Henryton,
Lord Radcliffe, Lord Cohen and Mr. L.M. de Silva)
March 8, 1956]

[Privy Council Appeal No. 27 of 1954]

Income Tax Ordinance, 1947, ss. 39(a) and 75(1) — Company dividend — Paid out of "chargeable income" for year of assessment — Deduction of tax — Failure of Comptroller to exercise discretion — Practice.

This was an appeal from the judgment of the Court of Appeal, Federation of Malaya reported in (1954) M.L.J. 83. The appeal arose out of an assessment to income tax made upon the respondent company by the Comptroller of Income Tax for the year of assessment 1951 under the Income Tax Ordinance. The question was what rate of income tax ought to be charged in respect of a part of the income of the respondent company amounting to \$533,333 that was distributed by way of dividend to its shareholders in November 1950. The respondent's trading year ended on June 30, 1950. The